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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 271 and 272

[EPA-R06-2015-2015-0661; FRL-9940-27-Region 6]

Arkansas: Final Authorization of State-initiated Changes and Incorporation by Reference of Approved State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: During a review of Arkansas' regulations, the Environmental Protection Agency (EPA) identified two State-initiated changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). We have determined that these changes are minor and satisfy all requirements needed to qualify for Final authorization and are authorizing the State-initiated changes through this direct Final action.

The Solid Waste Disposal Act, as amended, commonly referred to as the Resource Conservation and Recovery Act (RCRA), allows the Environmental Protection Agency (EPA) to authorize States to operate their hazardous waste management programs in lieu of the Federal program. The EPA uses the regulations entitled "Approved State Hazardous Waste Management Programs" to provide notice of the authorization status of State programs and to incorporate by reference those provisions of the State statutes and regulations that will be subject to the EPA's inspection and enforcement. The rule codifies in the regulations the prior approval of Arkansas' hazardous waste management program and incorporates by reference authorized provisions of

the State's statutes and regulations.

DATES: This regulation is effective **[INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, unless the EPA receives adverse written comment on this regulation by the close of business **[INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If the EPA receives such comments, it will publish a timely withdrawal of this direct final rule in the **Federal Register** informing the public that this rule will not take effect. The Director of the Federal Register approves this incorporation by reference as of **[INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

ADDRESSES: Submit your comments by one of the following methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
2. *E-mail:* patterson.alima@epa.gov or banks.julia@epa.gov
3. *Mail:* Alima Patterson, Region 6, Regional Authorization Coordinator, or Julia Banks, Codification Coordinator, State/Tribal Oversight Section (6PD-O), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733.
4. *Hand Delivery or Courier:* Deliver your comments to Alima Patterson, Region 6, Regional Authorization Coordinator, or Julia Banks, Codification Coordinator, State/Tribal Oversight Section (6PD-O), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733.

Instructions: Do not submit information that you consider to be CBI or otherwise

protected through <http://www.regulations.gov>, or e-mail. The Federal <http://www.regulations.gov> Web site is an “anonymous access” system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to the EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If the EPA cannot read your comment due to technical difficulties, and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. (For additional information about the EPA’s public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>).

You can view and copy the documents that form the basis for this codification and associated publicly available materials from 8:30 a.m. to 4:00 p.m. Monday through Friday at the following location: EPA Region 6, 1445 Ross Avenue, Dallas, Texas, 75202-2733, phone number (214) 665-8533 or (214) 665-8178. Interested persons wanting to examine these documents should make an appointment with the office at least two weeks in advance.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, Region 6 Regional Authorization Coordinator, or Julia Banks, Codification Coordinator, State/Tribal Oversight Section (6PD-O), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, Phone numbers: (214) 665-8533 or (214) 665-8178, and E-

mail address *patterson.alima@epa.gov* or *banks.julia@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Authorization of State-Initiated Changes

A. Why are revisions to State programs necessary?

States which have received Final authorization from the EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. As the Federal program changes, the States must change their programs and ask the EPA to authorize the changes. Changes to State hazardous waste programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to the EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 268, 270, 273 and 279. States can also initiate their own changes to their hazardous waste program and these changes must then be authorized.

B. What decisions have we made in this rule?

We conclude that Arkansas' revisions to its authorized program meet all of the statutory and regulatory requirements established by RCRA. We found that the State-initiated changes make Arkansas' rules more clear or conform more closely to the Federal equivalents and are so

minor in nature that a formal application is unnecessary. Therefore, we grant Arkansas final authorization to operate its hazardous waste program with the changes described in the table at Section G below. Arkansas has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders (except in Indian Country) and for carrying out all authorized aspects of the RCRA program, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, the EPA will implement those requirements and prohibitions in Arkansas, including issuing permits, until the State is granted authorization to do so.

C. What is the effect of this authorization decision?

The effect of this decision is that a facility in Arkansas subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. Arkansas has enforcement responsibilities under its State hazardous waste program for violations of such program, but the EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Do inspections, and require monitoring, tests, analyses, or reports;
- Enforce RCRA requirements and suspend or revoke permits; and
- Take enforcement actions regardless of whether the State has taken its own actions.

This action does not impose additional requirements on the regulated community because the statutes and regulations for which Arkansas is being authorized by this direct final action are

already effective and are not changed by this action.

D. Why wasn't there a proposed rule before this rule?

The EPA did not publish a proposal before this rule because we view this as a routine program change and do not expect comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the Proposed Rules section of this **Federal Register** we are publishing a separate document that proposes to authorize the State program changes.

E. What happens if EPA receives comments that oppose this action?

If the EPA receives comments that oppose the authorization of the State-initiated changes in this codification document, we will withdraw this rule by publishing a timely document in the **Federal Register** before the rule becomes effective. The EPA will base any further decision on the authorization of the State program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule. If you want to comment on this authorization, you must do so at this time. If we receive comments that oppose only the authorization of a particular change to the State hazardous waste program we may withdraw only that part of this rule, but the authorization of the program changes that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization of the State program will become effective and which part is being withdrawn.

In addition to the authorizing of the rules described above in this document. The purpose

of this Federal Register document is to codify Arkansas' base hazardous waste management program and its revisions to that program. The EPA has already provided notices and opportunity for comments on the Agency's decisions to authorize the Arkansas program, and the EPA is not now reopening the decisions, nor requesting comments, on the Arkansas authorizations as published in the Federal Register documents specified in Section I.F of this document.

F. For what has Arkansas previously been authorized?

Arkansas initially received final authorization on January 25, 1985 (50 FR 1513), to implement its Base Hazardous Waste Management program. Arkansas received authorization for revisions to its program on January 11, 1985 (50 FR 1513), effective January 25, 1985; March 27, 1990 (55 FR 11192), effective May 29, 1990; September 18, 1991 (56 FR 47153), effective November 18, 1991; October 5, 1992 (57 FR 45721), effective December 4, 1992; October 7, 1994 (59 FR 51115), effective December 21, 1994, April 24, 2002 (67 FR 20038), effective June 24, 2002, as amended June 28, 2010 (75 FR 36538); August 15, 2007 (72 FR 45663), effective October 15, 2007, as amended June 28, 2010 (75 FR 36538); June 28, 2010 (75 FR 36538), effective August 27, 2010; August 10, 2012 (77 FR 47779), effective October 9, 2012; October 2, 2014 (79 FR 59438), effective December 1, 2014; and October 31, 2014, 79 FR 64678, effective December 30, 2014.

G. What changes are we authorizing with this action?

The State has made amendments to Arkansas Regulation No. 23 Sections 264.1030(c)

and 265.142(a) introductory paragraph, analogous to 40 CFR 264.1030(c) and 265.142(a) introductory paragraph, respectively. These amendments clarify the State's regulations and make the State's regulations more internally consistent. The State's laws and regulations, as amended by these provisions, provide authority which remains equivalent to and no less stringent than the Federal laws and regulations. These State-initiated changes satisfy the requirements of 40 CFR 271.21(a). We are granting Arkansas final authorization to carry out the following provisions of the State's program in lieu of the Federal program. These provisions are analogous to the indicated RCRA regulations found at 40 CFR as of July 1, 2011. The Arkansas provisions are from the Arkansas Pollution Control and Ecology Commission Regulation No. 23, Hazardous Waste Management, adopted on June 22, 2012, effective August 12, 2012.

H. Who handles permits after the authorization takes effect?

This authorization does not affect the status of State permits and those permits issued by the EPA because no new substantive requirements are a part of these revisions.

I. How does this action affect Indian Country (18 U.S.C. 1151) in Arkansas?

Arkansas is not authorized to carry out its Hazardous Waste Program in Indian Country within the State. This authority remains with EPA. Therefore, this action has no effect in Indian Country.

II. Incorporation-by-Reference

A. What is codification?

Codification is the process of placing a State's statutes and regulations that comprise the State's authorized hazardous waste management program into the Code of Federal Regulations (CFR). Section 3006(b) of RCRA, as amended, allows the Environmental Protection Agency (EPA) to authorize State hazardous waste management programs to operate in lieu of the Federal hazardous waste management regulatory program. The EPA codifies its authorization of State programs in 40 CFR part 272 and incorporates by reference State statutes and regulations that the EPA will enforce under sections 3007 and 3008 of RCRA and any other applicable statutory provisions.

The incorporation by reference of State authorized programs in the CFR should substantially enhance the public's ability to discern the current status of the authorized State program and State requirements that can be Federally enforced. This effort provides clear notice to the public of the scope of the authorized program in each State.

B. What is the history of codification of Arkansas' hazardous waste management program?

The EPA incorporated by reference Arkansas' then authorized hazardous waste program effective December 13, 1993 (58 FR 52674), August 21, 1995 (60 FR 32112), August 27, 2010 (75 FR 36538) and December 1, 2014 (79 FR 59438). Note: At 79 FR 59443, the State agency acronym should be referenced as "(ADEQ)" with regard to the State's Memorandum of Agreement with the EPA.

In this document, the EPA is revising subpart E of 40 CFR part 272 to include the authorization revision action effective December 30, 2014 (79 FR 64678).

C. What codification decisions have we made in this rule?

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the Arkansas rules described in the amendments to 40 CFR part 272 set forth below. The EPA has made, and will continue to make, these documents available electronically through www.regulations.gov and in hard copy at the appropriate EPA office (see the ADDRESSES section of this preamble for more information).

The purpose of this **Federal Register** document is to codify Arkansas' base hazardous waste management program and its revisions to that program. The document incorporates by reference Arkansas' hazardous waste statutes and regulations and clarifies which of these provisions are included in the authorized and Federally enforceable program. By codifying Arkansas' authorized program and by amending the Code of Federal Regulations, the public will be more easily able to discern the status of Federally approved requirements of the Arkansas hazardous waste management program.

The EPA is incorporating by reference the Arkansas authorized hazardous waste management program in subpart E of 40 CFR part 272. Section 272.201 incorporates by reference Arkansas' authorized hazardous waste statutes and regulations. Section 272.201 also references the statutory provisions (including procedural and enforcement provisions) which provide the legal basis for the State's implementation of the hazardous waste management program, the Memorandum of Agreement, the Attorney General's Statements and the Program Description, which are approved as part of the hazardous waste management program under Subtitle C of RCRA.

D. What is the effect of Arkansas' codification on enforcement?

The EPA retains its authority under statutory provisions, including but not limited to, RCRA sections 3007, 3008, 3013 and 7003, and other applicable statutory and regulatory provisions to undertake inspections and enforcement actions and to issue orders in authorized States. With respect to these actions, the EPA will rely on Federal sanctions, Federal inspection authorities, and Federal procedures rather than any authorized State analogues to these provisions. Therefore, the EPA is not incorporating by reference such particular, approved Arkansas procedural and enforcement authorities. Section 272.201(c)(2) of 40 CFR lists the statutory provisions which provide the legal basis for the State's implementation of the hazardous waste management program, as well as those procedural and enforcement authorities that are part of the State's approved program, but these are not incorporated by reference.

E. What state provisions are not part of the codification?

The public needs to be aware that some provisions of Arkansas' hazardous waste management program are not part of the Federally authorized State program. These non-authorized provisions include:

- (1) provisions that are not part of the RCRA subtitle C program because they are "broader in scope" than RCRA subtitle C (see 40 CFR 271.1(i));
- (2) Federal rules adopted by Arkansas but for which the State is not authorized;
- (3) Unauthorized amendments to authorized State provisions;
- (4) New unauthorized State requirements;
- (5) A Federal program which has since been withdrawn by the U.S. EPA; and

(6) Federal rules for which Arkansas is authorized but which were vacated by the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Cir. No. 98-1379 and 08-1144, June 27, 2014).

State provisions that are “broader in scope” than the Federal program are not part of the RCRA authorized program and the EPA will not enforce them. Therefore, they are not incorporated by reference in 40 CFR part 272. For reference and clarity, 40 CFR 272.201(c)(3) lists the Arkansas regulatory provisions which are “broader in scope” than the Federal program and which are not part of the authorized program being incorporated by reference. “Broader in scope” provisions cannot be enforced by the EPA; the State, however, may enforce such provisions under State law.

Additionally, Arkansas’ hazardous waste regulations include amendments which have not been authorized by the EPA. Since the EPA cannot enforce a State’s requirements which have not been reviewed and authorized in accordance with RCRA section 3006 and 40 CFR part 271, it is important to be precise in delineating the scope of a State’s authorized hazardous waste program. Regulatory provisions that have not been authorized by the EPA include amendments to previously authorized State regulations as well as certain Federal rules and new State requirements.

Arkansas has adopted but is not authorized for the following Federal rules published in the **Federal Register** on July 15, 1985 (50 FR 28702; amendments to 40 CFR 260.22 only); April 12, 1996 (61 FR 16290); October 4, 2005 (70 FR 57769); April 4, 2006 (71 FR 16862); July 14, 2006 (71 FR 40254); and January 8, 2010 (75 FR 1236). Therefore, these Federal amendments included in Arkansas’ regulations, are not part of the State’s authorized program

and are not part of the incorporation by reference addressed by this **Federal Register** document.

Arkansas adopted and was authorized for the following Federal Performance Track program, which has since been terminated by the U.S. EPA: published in the Federal Register on April 22, 2004 (69 FR 21737), as amended October 25, 2004 (69 FR 62217). Arkansas has also adopted but is not authorized for the April 4, 2006 (71 FR 16862) Burden Reduction Initiative amendments to the following provisions regarding Performance Track: 40 CFR 260.10, 265.15, 265.174, 265.195, 265.201, 265.1101, 270.42(l) and Item O.1 of appendix I to §270.42.

Arkansas has adopted and was authorized for the following Federal rules which have since been vacated by the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Cir. No. 98-1379 and 08-1144, respectively; June 27, 2014): (1) the Comparable Fuels Exclusion at 40 CFR 261.4(a)(16) and 261.38 published in the Federal Register on June 19, 1998 (63 FR 33782), as amended on June 15, 2010 (75 FR 33712); and (2) the Gasification Exclusion Rule published on January 2, 2008 (73 FR 57).

State regulations that are not incorporated by reference in this rule at 40 CFR 272.201(c)(1), or that are not listed in 40 CFR 272.201(c)(2) (“legal basis for the State’s implementation of the hazardous waste management program”), 40 CFR 272.201(c)(3) (“broader in scope”) or 40 CFR 272.201(c)(4) (“unauthorized state amendments”), are considered new unauthorized State requirements. These requirements are not Federally enforceable.

With respect to any requirement pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA) for which the State has not yet been authorized, the EPA will continue to enforce the Federal HSWA standards until the State is authorized for these provisions.

F. What will be the effect of federal HSWA requirements on the codification?

The EPA is not amending 40 CFR part 272 to include HSWA requirements and prohibitions that are implemented by the EPA. Section 3006(g) of RCRA provides that any HSWA requirement or prohibition (including implementing regulations) takes effect in authorized and not authorized States at the same time. A HSWA requirement or prohibition supersedes any less stringent or inconsistent State provision which may have been previously authorized by the EPA (50 FR 28702, July 15, 1985). The EPA has the authority to implement HSWA requirements in all States, including authorized States, until the States become authorized for such requirement or prohibition. Authorized States are required to revise their programs to adopt the HSWA requirements and prohibitions, and then to seek authorization for those revisions pursuant to 40 CFR part 271.

Instead of amending 40 CFR part 272 every time a new HSWA provision takes effect under the authority of RCRA section 3006(g), the EPA will wait until the State receives authorization for its analog to the new HSWA provision before amending the State's 40 CFR part 272 incorporation by reference. Until then, persons wanting to know whether a HSWA requirement or prohibition is in effect should refer to 40 CFR 271.1(j), as amended, which lists each such provision.

Some existing State requirements may be similar to the HSWA requirement implemented by the EPA. However, until the EPA authorizes those State requirements, the EPA can only enforce the HSWA requirements and not the State analogs. The EPA will not codify those State requirements until the State receives authorization for those requirements.

STATUTORY AND EXECUTIVE ORDER REVIEWS

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This rule incorporates by reference Arkansas' authorized hazardous waste management regulations and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule merely incorporates by reference certain existing State hazardous waste management program requirements which the EPA already approved under 40 CFR part 271, and with which regulated entities must already comply, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104B4).

This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely incorporates by reference existing authorized State hazardous waste management program requirements without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also does not have Tribal implications within the meaning of Executive Order 13175 (65 FR 67249, November 6, 2000).

This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

The requirements being codified are the result of Arkansas’ voluntary participation in the EPA’s State program authorization process under RCRA Subtitle C. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the “Attorney General’s Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings” issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The

EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 271

Environmental Protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

40 CFR Part 272

Hazardous materials transportation, Hazardous waste, Incorporation by reference, Intergovernmental relations, Water pollution control, Water supply.

Authority: This rule is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: November 16, 2015.

Ron Curry,
Regional Administrator,
Region 6.

For the reasons set forth in the preamble, under the authority at 42 U.S.C. 6912(a), 6926, and 6974(b), EPA is granting final authorization under part 271 to the State of Arkansas for revisions to its hazardous waste program under the Resource Conservation and Recovery Act and is amending 40 CFR part 272 as follows.

PART 272 - APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS

1. The authority citation for part 272 continues to read as follows:

Authority: Sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

2. Revise § 272.201 to read as follows:

§ 272.201 Arkansas State-administered program: Final authorization.

(a) Pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(b), the EPA granted Arkansas final authorization for the following elements as submitted to EPA in Arkansas' base program application for final authorization which was approved by EPA effective on January 25, 1985. Subsequent program revision applications were approved effective on May 29, 1990; November 18, 1991; December 4, 1992; December 21, 1994; June 24, 2002; October 15, 2007; August 27,

2010; October 9, 2012, December 1, 2014, December 30, 2014 and **[INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

(b) The State of Arkansas has primary responsibility for enforcing its hazardous waste management program. However, EPA retains the authority to exercise its inspection and enforcement authorities in accordance with sections 3007, 3008, 3013, 7003 of RCRA, 42 U.S.C. 6927, 6928, 6934, 6973, and any other applicable statutory and regulatory provisions, regardless of whether the State has taken its own actions, as well as in accordance with other statutory and regulatory provisions.

(c) *State statutes and regulations.* (1) The Arkansas statutes and regulations cited in paragraph (c)(1)(i) of this section are incorporated by reference as part of the hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.* The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain copies of the Arkansas statutes that are incorporated by reference from Michie Publishing, 1275 Broadway Albany, New York 12204, Phone: (800) 223-1940. Copies of the Arkansas regulations that are incorporated by reference are available from the Arkansas Department of Environmental Quality website at <http://www.adeq.state.ar.us/regs/default.htm> or the Public Outreach Office, ADEQ, 5301 Northshore Drive, North Little Rock, Arkansas 72118-5317, Phone: (501) 682-0923. You may inspect a copy at EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202 (Phone number (214) 665-8533), or at the National Archives and Records Administration (NARA). For information

on the availability of this material at NARA, call 202-741-6030, or go to:

<http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

(i) The binder entitled “EPA-Approved Arkansas Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program”, dated December 2014.

(ii) [Reserved]

(2) The following provisions provide the legal basis for the State’s implementation of the hazardous waste management program, but they are not being incorporated by reference and do not replace Federal authorities:

(i) Arkansas Code of 1987 Annotated (A.C.A.), 2011 Replacement, Title 4, Business and Commercial Law, Chapter 75: Section 4-75-601(4) “Trade Secret”.

(ii) Arkansas Code of 1987 Annotated (A.C.A.), 2011 Replacement, Title 8, Environmental Law, Chapter 1: Section 8-1-107.

(iii) Arkansas Hazardous Waste Management Act of 1979, as amended, Arkansas Code of 1987 Annotated (A.C.A.), 2011 Replacement, Title 8, Environmental Law, Chapter 7, Subchapter 2: Sections 8-7-204 (except 8-7-204(e)(3)(B)), 8-7-205 through 8-7-214, 8-7-

217, 8-7-218, 8-7-220, 8-7-222, 8-7-224, 8-7-225(b) through 8-7-225(d), and 8-7-227.

(iv) Arkansas Resource Reclamation Act of 1979, as amended, Arkansas Code of 1987 Annotated (A.C.A.), 2011 Replacement, Title 8, Environmental Law, Chapter 7, Subchapter 3: Sections 8-7-302(3), 8-7-303 and 8-7-308.

(v) Remedial Action Trust Fund Act of 1985, as amended, Arkansas Code of 1987 Annotated (A.C.A.), 2011 Replacement, Title 8, Environmental Law, Chapter 7, Subchapter 5: Sections 8-7-503(6) and (7), 8-7-505(3), 8-7-507, 8-7-508, 8-7-511 and 8-7-512.

(vi) Arkansas Freedom of Information Act (FOIA) of 1967, as amended, Arkansas Code of 1987 Annotated (A.C.A.), 2011 Replacement, Title 25, State Government, Chapter 19: Sections 25-19-103(1), 25-19-105, 25-19-107.

(vii) Arkansas Pollution Control and Ecology (APC&E) Commission Regulation No. 23, Hazardous Waste Management, as amended June 22, 2012, effective August 12, 2012, Chapter One; Chapter Two, Sections 1, 2, 3(a), 3(b)(3), 4, 260.2, 260.20(c) through (f), 261 Appendix IX, 270.7(h) and (j), 270.10(e)(8), 270.34, Chapter Three, Sections 19, 21 and 22; Chapter Five, Section 28.

(viii) Arkansas Pollution Control and Ecology (APC&E) Commission, Regulation No. 7, Civil Penalties, July 24, 1992.

(ix) Arkansas Pollution Control and Ecology (APC&E) Commission, Regulation No. 8, Administrative Procedures, February 12, 2009.

(3) The following statutory and regulatory provisions are broader in scope than the Federal program, are not part of the authorized program, and are not incorporated by reference:

(i) Arkansas Hazardous Waste Management Act, as amended, Arkansas Code of 1987 Annotated (A.C.A.), 2011 Replacement, Title 8, Environmental Law, Chapter 7, Subchapter 2: Section 8-7-226.

(ii) Arkansas Pollution Control and Ecology (APC&E) Commission Regulation No. 23, Hazardous Waste Management, as amended June 22, 2012, effective August 12, 2012, Chapter Two, Sections 6, 262.13(c), 262.24(d), 263.10(e), 263.13, 264.71(e), and 265.71(e).

(4) *Unauthorized State amendments and provisions.* (i) Arkansas has partially or fully adopted, but is not authorized to implement, the Federal rules that are listed in the table in this paragraph (c)(4)(i). The EPA will continue to implement the Federal HSWA requirements for which Arkansas is not authorized until the State receives specific authorization for those requirements. The EPA will not enforce the non-HSWA Federal rules although they may be enforceable under State law. For those Federal rules that contain both HSWA and non-HSWA requirements, the EPA will enforce only the HSWA portions of the rules.

Federal Requirement	Federal Register Reference	Publication Date
HSWA Codification Rule – Delisting (HSWA) (Checklist 17B - amendments to 40 CFR 260.22 only)	50 FR 28702	July 15, 1985
Revision of Wastewater Treatment Exemptions for Hazardous Waste Mixtures (“Headworks exemptions”) (Non-HSWA) (Checklist 211)	70 FR 57769	October 4, 2005
Burden Reduction Initiative (HSWA and Non-HSWA) (Checklist 213)	71 FR 16862	April 4, 2006
Corrections to Errors in the Code of Federal Regulations (HSWA and Non-HSWA) (Checklist 214)	71 FR 40254	July 14, 2006

(ii) The Federal rules listed in the table in this paragraph (c)(4)(ii) are not delegable to States. Arkansas has adopted these provisions and left the authority to the EPA for implementation and enforcement.

Federal Requirement	Federal Register Reference	Publication Date
Imports and Exports of Hazardous Waste: Implementation of OECD Council Decision (HSWA) (Checklist 152)	61 FR 16290.....	April 12, 1996
OECD Requirements; Export Shipments of Spent Lead-Acid Batteries (Non-HSWA) (Checklist 222)	75 FR 1236.....	January 8, 2010

(5) *Terminated Federal program.* Arkansas adopted and was authorized for the following Federal program as amended, which has since been terminated by the U.S. EPA. In

addition, Arkansas has adopted and is not authorized for the April 4, 2006 Burden Reduction Initiative (71 FR 16862; Checklist 213) amendments to these provisions affecting the Performance Track program: 40 CFR 260.10, 265.15, 265.174, 265.195, 265.201, 265.1101, 270.42(l) and Item O.1 of appendix I to §270.42.

Federal Requirement	Federal Register Reference	Publication Date
National Environmental Performance Track Program (Checklist 204)	69 FR 21737	April 22, 2004
National Environmental Performance Track Program; Corrections (Rule 204.1)	69 FR 62217	October 25, 2004

(6) *Vacated Federal rules.* Arkansas adopted and was authorized for the following Federal rules which have since been vacated by the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Cir. No. 98-1379 and 08-1144, respectively; June 27, 2014):

Federal Requirement	Federal Register Reference	Publication Date
Hazardous Waste Combustors; Revised Standards (HSWA) (Checklist 168 – 40 CFR 261.4(a)(16) and 261.38 only)	63 FR 33782	June 19, 1998
Exclusion of Oil-Bearing Secondary Materials Processed in a Gasification System to Produce Synthesis Gas (Checklist 216 – Definition of “Gasification” at 40 CFR 260.10 and amendment to 40 CFR 261.4(a)(12)(i))	73 FR 57	January 2, 2008
Expansion of RCRA Comparable Fuel Exclusion (Checklist 221 – amendments to 40 CFR 261.4(a)(16) and 261.38)	73 FR 77954	December 19, 2008

(7) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region VI and the State of Arkansas, signed by the Executive Director of the Arkansas Department of

Environmental Quality (ADEQ) on June 27, 2012, and by the EPA Regional Administrator on July 10, 2012, is referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(8) *Statement of legal authority.* “Attorney General’s Statement for Final Authorization”, signed by the Attorney General of Arkansas on July 9, 1984 and revisions, supplements, and addenda to that Statement dated September 24, 1987, February 24, 1989, December 11, 1990, May 7, 1992 and by the Independent Legal Counsel on May 10, 1994, February 2, 1996, March 3, 1997, July 31, 1997, December 1, 1997, December 12, 2001, July 27, 2006, December 12, 2010 and October 1, 2012 are referenced as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(9) *Program Description.* The Program Description and any other materials submitted as part of the original application or as supplements thereto are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

3. Appendix A to part 272 is amended by revising the listing for “Arkansas” to read as follows:

Appendix A to Part 272 — State Requirements

* * * * *

Arkansas

The statutory provisions include:

Arkansas Hazardous Waste Management Act of 1979, as amended, Arkansas Code of 1987 Annotated (A.C.A.), 2011 Replacement, Title 8, Environmental Law, Chapter 7, Subchapter 2: Sections 8-7-202, 8-7-203, 8-7-215, 8-7-216, 8-7-219, 8-7-221, 8-7-223 and 8-7-225(a).

Arkansas Code of 1987 Annotated (A.C.A.), 2011 Replacement, Title 8, Environmental Law, Chapter 10, Subchapter 3: Section 8-10-301(d).

Copies of the Arkansas statutes that are incorporated by reference are available from Michie Publishing, 1275 Broadway Albany, New York 12204, Phone: (800) 223-1940.

The regulatory provisions include:

Arkansas Pollution Control and Ecology (APC&E) Commission Regulation No. 23, Hazardous Waste Management, as amended June 22, 2012, effective August 12, 2012. Please note that the 2012 APC&E Commission Regulation No. 23, is the most recent version of the Arkansas authorized hazardous waste regulations. For a few provisions, the authorized versions are found in the APC&E Commission Regulation 23, effective January 21, 1996, March 23, 2006 or June 13, 2010. Arkansas made subsequent changes to these provisions but these changes have not

been authorized by EPA. The provisions from the January 21, 1996, March 23, 2006 or June 13, 2010 regulations are noted below.

Chapter Two, Sections 3(b) introductory paragraph; 3(b)(2); 3(b)(4); Section 260 -- Hazardous Waste Management System – General - 260.1; 260.3; 260.10 (except the definitions of “consolidation”, “gasification”, “Performance Track member facility”, the phrase “a written permit issued by the Arkansas Highway and Transportation Department authorizing a person to transport hazardous waste (Hazardous Waste Transportation Permit), or” in the definition for “permit”) 260.11 (except reserved provisions); 260.20 (except 260.20(c) through (f)); 260.21; 260.23; 260.30; 260.31(a); 260.31(b) introductory paragraph; 260.31 (b)(1) through (8) (March 23, 2006); 260.31(c); 260.32; 260.33; 260.40; and 260.41.

Section 261 – Identification and Listing of Hazardous Waste - 261.1; 261.2; 261.3 (except 261.3(a)(2)(iv) and reserved provisions); 261.3(a)(2)(iv) (March 23, 2006); 261.4(a) (except 261.4(a)(9)(iii), 261.4(a)(12)(i), and 261.4(a)(16)); 261.4(a)(9)(iii) (March 23, 2006); 261.4(b) through (e); 261.4(f) (except 261.4(f)(9)); 261.4(f)(9) (March 23, 2006); 261.4(g); 261.5; 261.6 (except (a)(5)); 261.7; 261.8; 261.9; 261.10; 261.11; 261.20 through 261.24; 261.30 through 261.33; 261.35; 261.39, 261.40, 261.41, Appendices I, VII and VIII.

Section 262 – Standards Applicable to Generators of Hazardous Waste - 262.10 (except 262.10(d)); 262.11; 262.12; 262.13 (except 262.13(c)); 262.20 (except reserved provision); 262.21; 262.22; 262.23; 262.24 (except 262.24(d)); 262.27; 262.30; 262.31 through 262.33;

262.34 (except 262.34(j) – (l)); 262.35 (except the phrase “and the requirements of § 262.13(d) and § 263.10(d)” at 262.35(a)(2)); 262.40; 262.41 (except references to PCBs) (January 21, 1996); 262.42; 262.43; 262.50 through 262.58; 262.60 (except 262.60(e)); 262.70; 262.200 through 262.216; and Appendix I.

Section 263 – Standards Applicable to Transporters of Hazardous Waste – 263.10 (except 263.10(d) and (e)), 263.11, 263.12, 263.20 (except 263.20(g)(4) and reserved provision), 263.21, 263.22, 263.30 and 263.31.

Section 264 – Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities – 264.1 (except reserved provisions); 264.3; 264.4; 264.10; 264.11; 264.12 (except 264.12(a)(2)); 264.13 through 264.19; 264.20(a) through (c); 264.30 through 264.35; 264.37; 264.50 through 264.56; 264.70; 264.71 (except 264.71(a)(3), (d) and (e)); 264.72; 264.73 (except 264.73(b)(18) and (b)(19)); 264.74; 264.75 (except first occurrence of 264.75(a) through (d) and 264.75(g)); 264.75(g) (January 21, 1996); 264.75(h) (January 21, 1996); 264.76(a); 264.77; 264.90 through 264.101; 264.110 through 264.120; 264.140; 264.141 (except the definition of “captive insurance” at 264.141(f)); 264.142; 264.143 (except the last sentence of 264.143(e)(1)); 264.144; 264.145 (except the last sentence of 264.145(e)(1)); 264.146; 264.147 (except the last sentences of 264.147(a)(1)(i) and 264.147(b)(1)(ii) and reserved provision); 264.148; 264.151; 264.170 through 264.174; 264.175 (except reserved provision); 264.176 through 264.179; 264.190 through 264.200; 264.220 through 264.223; 264.226 through 264.232; 264.250 through 264.254; 264.256 through 264.259; 264.270 through 264.273; 264.276;

264.278 through 264.283; 264.300 through 264.304; 264.309; 264.310; 264.312(a); 264.313; 264.314 (except 264.314(a)(2) and (a)(3)) (June 13, 2010); 264.315; 264.316 (except 264.316(b)); 264.316(b) (June 13, 2010); 264.317; 264.340 through 264.345; 264.347 (March 23, 2006); 264.351; 264.550, 264.551; 264.552 (except 264.552 (a)(3)(ii) – (iv)); 264.552 (a)(3)(ii) – (iv) (June 13, 2010); 264.553 through 264.555 (except reserved provision); 264.570 through 264.575; 264.600 through 264.603; 264.1030 through 264.1036; 264.1050 through 264.1061(except reserved provision); 264.1062 (June 13, 2010); 264.1063 through 264.1065; 264.1080 through 264.1090; 264.1100 through 264.1102; 264.1200; 264.1201; 264.1202; Appendix I; and Appendices IV, V and IX.

Section 265 – Interim Status Standards for Owners and Operators of Hazardous Waste

Treatment, Storage, and Disposal Facilities - 265.1 (except 265.1(c)(4) and reserved provisions); 265.4, 265.10, 265.11, 265.12 (except 265.12(a)(2)), 265.13, 265.14, 265.15 (except the phrase “, except for Performance Track member facilities...as described in paragraph (b)(5) of this section” at 265.15(b)(4) and 265.15(b)(5)); 265.16 (except 265.16(a)(4)); 265.17 through 265.19; 265.30 through 265.35; 265.37; 265.50; 265.51; 265.52 (except the last three sentences of 265.52(b)); 265.53 through 265.55; 265.56 (except 265.56(i)); 265.56(i) and (j) (March 23, 2006); 265.70, 265.71 (except 265.71(a)(3), (d) and (e)), 265.72; 265.73 (March 23, 2006); 265.74; 265.75 (except 265.75(g)); 265.75(g) and (h) (January 21, 1996); 265.76(a); 265.77; 265.90 (except the last sentence of 265.90(d)(1), and in 265.90(d)(3) the phrase “and place it in the facility’s...closure of the facility”); 265.91; 265.92; 265.93 (except the last sentence of 265.93(d)(2) and the last sentence of 265.93(d)(5)); 265.94; 265.110 through 265.112; 265.113

(except 265.113(e)(5)); 265.113(e)(5) (March 23, 2006); 265.114 through 265.121; 265.140, 265.141 (except the definition of “captive insurance” at 265.141(f)); 265.142; 265.143 (except the last sentence of 265.143(d)(1) and “qualified” before “Arkansas-registered Professional Engineer” in 265.143(h)); 265.144; 265.145; 265.146; 265.147 (except the last sentences of 265.147(a)(1) and 265.147(b)(1), “qualified” before “Arkansas-registered Professional Engineer” in 265.147(e) and reserved provision); 265.148; 265.170 through 265.173; 265.174 (March 23, 2006); 265.176; 265.177, 265.178, 265.190; 265.191; 265.192; 265.193(a) (March 23, 2006); 265.193(b) through 265.193(i); 265.194; 265.195 (March 23, 2006); 265.196 through 265.200; 265.201 (March 23, 2006); 265.202; 265.220; 265.221 (except 265.221(a)); 265.221(a) (March 23, 2006); 265.222; 265.223 and 265.224 (March 23, 2006); 265.225; 265.226; 265.228 through 265.231; 265.250 through 265.258; 265.259(a) (March 23, 2006); 265.259(b) and (c); 265.260; 265.270; 265.272; 265.273; 265.276; 265.278; 265.279; 265.280 (except the word “qualified” before “Arkansas-registered professional engineer” in 265.180(e)); 265.281; 265.282; 265.300; 265.301(a) (March 23, 2006); 265.301(b) through 265.301(i); 265.302; 265.303(a) (March 23, 2006); 265.303(b) and (c); 265.304; 265.309; 265.310; 265.312(a); 265.313; 265.314(a) (except 265.314(a)(2) and (a)(3)) (March 23, 2006); 265.314(b) (except the last sentence) (March 23, 2006); 265.314(c) through (g) (March 23, 2006); 265.315; 265.316; 265.340; 265.341; 265.345; 265.347; 265.351; 265.352; 265.370; 265.373; 265.375; 265.377; 265.381; 265.382; 265.383; 265.400 through 265.406; 265.430; 265.440 through 265.445; 265.1030 through 265.1035 (except reserved provision); 265.1050 (except reserved provision); 265.1051 through 265.1060; 265.1061 (March 23, 2006); 265.1062 (March 23, 2006); 265.1063; 265.1064; 265.1080 through 265.1090; 265.1100 (March 23, 2006); 265.1101 (except (c)(2) and the phrase “, except for

Performance Track...director” and the last sentence in 265.1101(c)(4)); 265.1101 (c)(2) (March 23, 2006); 265.1102; 265.1200; 265.1201; 265.1202; Appendix I; and Appendices III through VI.

Section 266 – Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities - 266.20 through 266.23; 266.70 (except 266.70(b)(3)); 266.80 (except items 6 and 7 to the 266.80(a) table); 266.100; 266.101; 266.102 (except 266.102(e)(10)); 266.102(e)(10) (March 23, 2006); 266.103 (except 266.103(d) and (k)); 266.103(d) and (k) (March 23, 2006); 266.104 through 266.112; 266.200 through 266.206; 266.210; 266.220; 266.225; 266.230; 266.235; 266.240; 266.245; 266.250; 266.255; 266.260; 266.305; 266.310; 266.315; 266.320; 266.325; 266.330; 266.335; 266.340; 266.345; 266.350; 266.355; 266.360; and Appendices I through XIII.

Section 267 – Standards for Owners and Operators of Hazardous Waste Facilities Operating Under a Standardized Permit - 267.1 through 267.3; 267.10 through 267.18; 267.30 through 267.36; 267.50 through 267.58; 267.70 through 267.76; 267.90; 267.101; 267.110 through 267.113; 267.115 through 267.117; 267.140 through 267.143; 267.147 through 267.151; 267.170 through 267.177; 267.190 through 267.204; and 267.1100 through 267.1108.

Section 268 – Land Disposal Restrictions - 268.1; 268.2 through 268.4, 268.7(a) (except 268.7(a)(1) and reserved provisions); 268.7(a)(1) (March 23, 2006); 268.7(b) (except 268.7(b)(6)); 268.7(b)(6) (March 23, 2006); 268.7(c) through (e); 268.9(a) (except second

sentence); 268.9(b) and (c); 268.9(d) introductory paragraph (March 23, 2006); 268.9(d) (1) and (2) (except reserved provision); 268.13; 268.14; 268.20, 268.30 through 268.39; 268.40 (except 268.40(e)(1) – (4) and 268.40(i)); 268.41; 268.42 (except 268.42(b)); 268.43; 268.45; 268.46; 268.48; 268.49; 268.50; and Appendices III, IV, VI through IX and XI.

Section 270 – Administered Permit Programs: The Hazardous Waste Permit Program - 270.1; 270.2; 270.3 (except reserved provision); 270.4; 270.5; 270.6; 270.7 (except 270.7(h) and (j)); 270.10 (except 270.10(e)(8) and (k)); 270.11 through 270.33; 270.40; 270.41; 270.42 (except 270.42(l)); 270.42 Appendix I (except entry at item O); 270.43; 270.50; 270.51; 270.60 (except reserved provision); 270.61 through 270.68; 270.70 through 270.73; 270.79; 270.80; 270.85; 270.90; 270.95; 270.100; 270.105; 270.110; 270.115; 270.120; 270.125; 270.130; 270.135; 270.140; 270.145; 270.150; 270.155; 270.160; 270.165; 270.170; 270.175; 270.180; 270.185; 270.190; 270.195; 270.200; 270.205; 270.210; 270.215; 270.220; 270.225; 270.230; 270.235; 270.250; 270.255; 270.260; 270.265; 270.270; 270.275; 270.280; 270.290; 270.300; 279.305; 270.310; 270.315; and 270.320.

Section 273 – Standards for Universal Waste Management - 273.1 through 273.4; 273.5 (except 273.5(b)(3)); 273.6; 273.8 through 273.20; 273.30 through 273.40; 273.50 through 273.56; 273.60; 273.61; 273.62; 273.70 (except 273.70 (d)); 273.80; and 273.81.

Section 279 – Standards for the Management of Used Oil - 279.1; 279.10; 279.11; 279.12; 279.20 through 279.24; 279.30; 279.31; 279.32; 279.40 through 279.47; 279.50 through 279.67;

279.70 through 279.75; 279.80; 279.81; and 279.82(a).

Copies of the Arkansas regulations that are incorporated by reference are available from the Arkansas Department of Environmental Quality website at

<http://www.adeq.state.ar.us/regs/default.htm> or the Public Outreach Office, ADEQ, 5301

Northshore Drive, North Little Rock, Arkansas 72118-5317, Phone: (501) 682-0923.

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